

## **MEMORANDUM**

TO: Indiana State Board of Education

FROM: Kevin C. McDowell, General Counsel

RE: Proposed Plans for the Board of School Trustees, Middlebury Community School Corporation

DATE: December 19, 2007

The current members of the Board of School Trustees for the Middlebury Community School Corporation are appointed. Petitioners initiated a drive to gather petitions to have the school board elected rather than appointed. In this endeavor, they were successful in obtaining the sufficient amount of registered voters. See I.C. §§ 20-23-8-10, 20-23-8-11. Thereafter, Petitioners presented their proposed Plan to the School Board. See I.C. § 20-23-8-12. The School Board disapproved of the Petitioners' Plan and proposed its own Plan, which also calls for an elected school board.

The School Board published the plans and submitted same to the State Board, as required by I.C. § 20-23-8-14. Upon review, it was discovered that the Petitioners' Plan, as submitted, would not satisfy the requirements of I.C. §§ 20-23-8-7, 20-23-8-8. Rather than recommend to the State Board that it not certify the Petitioners' Plan, which would have required Petitioners to begin anew, the State Board appointed a Hearing Examiner under I.C. § 20-23-8-15(b) to investigate and determine whether revisions could be made to Petitioners' Plan in such a fashion as to give legal effect. To this end, the Hearing Examiner contacted both parties, received information concerning the current appointment status of the school board members, and reviewed Indiana law concerning elections, particularly school board elections. After a series of attempts at reforming the Petitioners' Plan, a final draft has been prepared and shared with the representative so the parties (see attached). The Petitioners' Plan, as amended, does not take effect with the Primary in May of 2008 as Petitioners' intended. The reason is that this would not be possible. A special election will need to be held so that voters can choose among (1) Petitioners' Plan, (2) the School Board's proposed Plan, and (3) the current Plan. This would have to occur within 90 days but could be extended up to six months in order to hold the special election at the Primary in May of 2008, which would be a cost savings to the school corporation and the county. Even if the election were held within 90 days, candidates would not be able to file their candidacy so as to timely qualify to run in the May primary. Accordingly, the Petitioners' Plan has been amended to take effect beginning with the next primary in an even-numbered year (2010), with

adjustments to appointed terms (hold-over) in order to give effect to the Petitioners' Plan should voters select it.

The School Board's proposed Plan, as submitted, satisfies both I.C. §§ 20-23-8-7, 20-23-8-8. The two plans cannot be combined or otherwise reconciled without affecting the intent of the parties who proposed each.

It is recommended that the State Board of Education, pursuant to I.C. § 20-23-8-15(a), certify the Petitioners' Plan, as amended, and the School Board's proposed Plan as submitted. Following certification, certified copies of the State Board action will be provided to the parties' representatives, the county clerk, and the county election board so that a special election can be conducted, as contemplated by I.C. § 20-23-8-16.

Enclosures